IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 212 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)

Versus

UNION ELECTRIC CORPORATION - Respondent(s)

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Appearance :
MR T.U. BHATT for Applicant
NOTICE SERVED for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 13/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1.The Income Tax Appellate Tribunal, Ahmedabad Bench “A” has referred the following question under Section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income Tax :

> “Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in deleting the penalty levied under section 271(1)(c) on the concealed income of Rs.26,853/- to which the assessee had agreed for disallowance ?”

2.The assessment year is 1981-82. The assessee filed return of income showing total income of Rs.2,31,020/-. During course of assessment, the assessing officer observed that, under the head `consumable stores', an amount of Rs.34,892/- had been debited. He called for details and on going through the same, found that an amount of Rs.26,853/- related to purchase of aluminum wires from M/s Zodiac Electrical (P) Ltd. It is an admitted fact that the assessee was doing job work of paper covering on the wire supplied by its sister concern, M/s Johnson Electric Co. and others, and was receiving labour charges towards such job work. It appears that both the assessee and M/s Johnson Electric

Co. were functioning from the same premises. The assessee carried out the job work on the wires received from M/s Zodiac Electricals Co. and returned the wires to M/s Johnson Electric Company and charged the said concern towards job work charges only. Therefore, the assessing officer came to the conclusion that the said amount which was debited under the head `consumable stores' was not allowable. The assessee accepted this fact and agreed to the addition. However, according to the assessing officer, by way of aforesaid debit entry, the assessee had tried to reduce its income which amounted to furnishing of inaccurate particulars of income and also concealment of its income. After hearing the assessee, he imposed minimum penalty at the rate of 100% i.e. penalty of Rs.26,853/-.

3. The assessee carried the matter in appeal before the CIT (Appeals), who did not accept the explanation tendered by the assessee and confirmed the penalty order. The assessee, therefore, went in second appeal before the Tribunal.

4. The Tribunal, after hearing the parties, came to the conclusion that the debit entry was a solitary instance

in which the cost of wires was shown as `consumable stores' and the assessee failed to recover the same from the sister concern. That the assessee had come forward with a request to disallow the same on account of apparent mistake and the request was made by the assessee during the course of assessment proceedings before the assessing officer had detected this fact. The Tribunal, therefore, held that the bonafides of the assessee were evident and in such case, imposition of penalty was not warranted.

5. Heard Mr.T.U.Bhatt, the learned standing counsel for the applicant revenue. Though served, there is no appearance on behalf of the respondent.

6. As can be seen from the impugned order of the Tribunal, it has recorded findings of fact as to the admission made by the assessee and the bonafides of the assessee. The facts as such are not disputed. Nothing has been brought on record by revenue to suggest that the finding that the assessee's action was bonafide, is incorrect in any manner whatsoever. In the circumstances, it is not possible to state that the Tribunal's order suffers from any infirmity.

7. In the circumstances, the Tribunal was justified in holding that the assessee was not liable to be penalized under section 271(1)(c) of the Act and the penalty of Rs.26,853/-levied was rightly deleted. The question is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

8. The Reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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